UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

Raymond W. Cahoon, Jr. et al	:	
Plaintiffs	:	
	:	
v.	:	C.A. No.: 07-008S
	:	
Oscar Shelton, et al	:	
Defendants	:	

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and this Court's Pretrial Order, Plaintiffs hereby move for entry of summary judgment against Defendants on their claims for declaratory judgment, estoppel and civil rights violations pursuant to 42 U.S.C. § 1983, on the grounds that Plaintiffs are entitled to judgment as a matter of law.

At such time that this Court rules that Plaintiffs are entitled to judgment on their claims for full payment of medical expenses for their on the job injuries post retirement and claims for civil rights violations, Plaintiffs request the opportunity to submit proofs of claim with respect to the medical reimbursements owed to each of them, as well as their claims for compensatory damages and attorneys fees.

INTRODUCTION

Each of the Plaintiffs are former City police officers and firefighters who have retired with a disability pension from the City because of an on the job injury and have been receiving bimonthly pension payments in accordance with City Ordinances and with the approval of the Warwick Board of Public Safety. These benefits included payment of all medical expenses incurred as the result of on the job injuries. During their employment with the City, it was an established practice that Plaintiffs who retired with a disability pension due to on the job injuries had 100% of the medical bills for their on the job injuries paid for by the City pursuant to the

City Charter and Ordinances, and R.I. Gen. Laws § 45-19-1, also known as the "Injured on the Job" or "IOD" statute.

By letter dated December 11, 2003, Defendant Oscar Shelton ("Shelton") notified all retired City police officers and firefighters, including Plaintiffs, that effective January 1, 2004, the long-standing policy and practice of paying 100% of all medical bills for on the job injuries would be terminated ("Shelton's Letter.") This new policy was put into effect by virtue of a unilateral action on the part of Shelton, as subsequently ratified by the other Defendants, without due process or providing notice or an opportunity for a hearing before the Board, either before or after the revocation of benefits. Because of the new policy, for Plaintiffs who retired on a disability pension, any part of a medical bill not covered by Blue Cross or Medicare has not been paid at all and those parts covered by Blue Cross or Medicare are now subject to all co-pays, deductibles and other limitations and restrictions imposed by Blue Cross or Medicare.

The alternative coverage allegedly provided by the municipality is deficient pursuant to R.I. Gen. Laws § 45-19-1 and would cause substantial hardship and injustice to the disabled retired police and fire fighters. Further, an adverse ruling will have a serious, negative impact on public safety, damaging recruitment and creating a disincentive for police officer and fire fighters to place public safety in front of personal safety. It is manifestly inequitable and contrary to the intent of the IOD statute for police officers and fire fighters to be required to bear the cost of medical expenses incurred as a result of injuries sustained while on duty protecting the public welfare, simply because they have retired because of the disability resulting from said injuries.

Plaintiffs contend that the actions of the Defendants contravened the City Charter, Ordinances and the IOD Statute, since their unilateral cessation of payment of medical benefits for retired police officers and firefighters constituted a violation of Plaintiffs' constitutional rights to due process entitling Plaintiffs to compensatory damages and attorneys' fees.

FACTUAL BACKGROUND[1]

Plaintiffs are former City police officers and firefighters who have been receiving disability pension benefits from the City because of on the job injuries, including bimonthly pension payments and full payment of medical expenses for those on the job injuries since their retirement. Some police and fire fighters were told when they were recruited for the job that, in the event of an on the job injury, they would be taken care of by the City for the rest of their lives, i.e., the medical bills for their on the job injuries would be paid in full. This provides a clear incentive and indeed necessary assurance for police officers and firefighters who must place the public safety ahead of their own personal welfare.

Defendant Oscar Shelton is a resident of the State of Rhode Island and is being sued in his individual capacity and in his official capacity as the Personnel Director for the City of Warwick. Defendant Scott Avedisian is a resident of the State of Rhode Island and is being sued in his individual capacity and in his official capacity as the Mayor for the City of Warwick. Defendant Diana Pearson is a resident of the State of Rhode Island and is being sued in her individual capacity and in her official capacity as the Assistant Solicitor for the City of Warwick. Defendant David Olsen is a resident of the State of Rhode Island and is being sued in his official capacity as the Treasurer for the City of Warwick.

Defendant City of Warwick (the “City”) is one of the thirty nine (39) cities and towns of the State of Rhode Island and is a political subdivision of the State. The City is governed pursuant to a Charter and a set of municipal ordinances. However, the Charter and Ordinances are silent with respect to the medical benefits to be paid to police and fire fighters retired on a disability pension for an on the job injury post retirement. The Division of Personnel for the City participates in the negotiating of contracts for benefits for City employees, including police and fire. However, whatever benefits police and fire fighters receive upon retiring is controlled either by State law, the Charter and Ordinances or the collective bargaining agreements in effect at the time of retirement.

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[1] The facts described herein are set forth in Plaintiffs’ Rule 12.1 Statement of Undisputed Facts filed herewith.

Defendant The Warwick Board of Public Safety (the "Board") is a municipal board of the City of Warwick, organized and existing pursuant to the municipal ordinances of the City, one of whose purposes is to exclusively deal with issues relating to pension and medical benefits of retired police officers and firefighters of the City. Defendants Leslie Waleska Baxter, Marshall Martin, Joseph Spinale and Michael Ryan are residents of the State of Rhode Island and are being sued individually and in their official capacities as the Chairwoman and members of the Warwick Board of Public Safety, respectively.

At the time of Plaintiffs' retirement, their requests for disability pensions were approved by the City. Plaintiffs were never informed by the City that, because of their retirement, 100% of their medical expenses for on the job injuries would no longer be paid by the City. To the contrary, it was understood by the members of the collective bargaining unit that disability retirement included the policy of the City to continue to pay for 100% of the medical expenses incurred as the result of on the job injuries post retirement. This policy was a known and established practice of the City based upon prior conduct of City officials acting pursuant to R. I. Gen. Laws § 45-19-1, the Injured on Duty statute. The full payment of medical expenses by the City for on the job injuries to former police officers and firefighters receiving disability pensions had continued for over thirty (30) years, until the time Shelton's Letter was sent.

After Plaintiffs' retirement, 100% of the medical expenses incurred because of their on the job injuries were paid for by the City. Plaintiffs would submit their medical bills to Blue Cross/Blue Shield of Rhode Island for payment and whatever portion was not paid for by Blue Cross was paid by the City.

In his letter of December 11, 2003, Shelton notified all retired City police officers and firefighters, including Plaintiffs, that effective January 1, 2004, the long-standing policy and practice of paying 100% of all medical bills for on the job injuries would be terminated. This new policy was put into effect by Shelton and/or the City without notice or an opportunity for a hearing before the Board of Public Safety or any other board or committee which is a part of the municipal government of the City. Plaintiffs did not have the opportunity to have their case heard before the Board of Public Safety before 100% payment of their medical expenses for their on the job injuries were terminated by the City or at any time thereafter.

The decision to change the policy regarding health insurance coverage for on the job injuries for retirees was made by Shelton, acting under color of state law, without the prior involvement of the Mayor, the City Council or the Board. With respect to the Board, although Shelton sent the members a letter explaining the new policy, Shelton did not appear before the Board and the Board did not hold any hearings or render any decisions with respect to the new policy for retired police officer and firefighters. Defendant Scott Avedisian ratified and failed to object to Shelton's Letter, despite the fact that the City policy was changed without notice or hearing before the Board.

This new policy has had significant detrimental impact upon the Plaintiffs in terms of their financial ability to obtain necessary care for the ongoing effects of their on the job injuries. Because of the new policy, any part of a medical bill not covered by Blue Cross or Medicare that has not been paid at all and those parts not covered by Blue Cross or Medicare are now subject to all co-pays, deductibles and other limitations and restrictions imposed by Blue Cross or Medicare and any shortfall is no longer reimbursed by the City. For retired disabled police and firefighters on Medicare there most likely will be no health care coverage for on the job injuries since Medicare does not pay for injuries when someone else is responsible, which encompasses on the job injuries.

On July 5, 2005, the Rhode Island Supreme Court issued its decision in *Hagenberg v. Avedisian*, 879 A. 2d 436, wherein the Court concluded, among other things, that the adoption of the new policy by virtue of Shelton's Letter was improper because only the Board had authority to make decisions regarding payment of pension and medical benefits for retired police officers and firefighters. Thereafter, the City and/or the other Defendants have failed, refused and neglected to reverse the new policy set forth in the Shelton Letter and have failed, refused and neglected to pay all medical bills for on the job injuries to Plaintiffs who were retired on disability pension prior to the Letter being sent.

STANDARD OF REVIEW

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment shall be rendered in favor of the moving party:

> "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." together

Summary judgment must be granted under Rule 56 unless there is a "genuine" issue as to a "material" fact. A factual issue is "material" only if it will affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248 (1986). An issue can be "genuine" only if there is a sufficient evidentiary basis upon which a reasonable jury could find that fact. *Id* at 249. In assessing the appropriateness of a motion for summary judgment it must be recalled that "Conclusory allegations by the party opposing the motion cannot defeat the motion. The non moving party must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348, 1356 (1986).

In addition, under both state and federal law, a Court has the power to construe statutes, ordinances and contractual agreements to determine the rights between the parties. R.I. Gen. Laws § 9-30-1 *et seq.*; 28 U.S. C § 2201. The federal Declaratory Judgments Act provides that "any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such." 28 U.S.C. § 2201.

In the present case, an actual justiciable controversy clearly exists between the parties with respect to whether, pursuant to R..I. Gen. Laws § 45-19-1, the City Charter and Ordinances, Plaintiffs retired on a disability pension are entitled to have 100% of their medical bills for their on the job injuries paid by Defendants post retirement. Moreover, this controversy is within the jurisdiction of this Court since it involves the interpretation of a statute, and the judgment or decree by this Court should end the controversy between the parties with respect to this matter. R.I. Gen. Laws § 9-30-1; 28 U.S.C. § 2201.

Plaintiffs request this Court to determine that based upon R.I. Gen. Laws § 45-19-1 and the City of Warwick Charter and Ordinances, Defendants must continue payment of all medical expenses to Plaintiffs for on the job injuries after disability retirement and that Defendant Shelton did not possess the authority to terminate 100% payment of medical expenses for on the job injuries post retirement.

Plaintiffs submit that they are entitled to judgment as a matter of law on their claims for payment of all medical expenses for their on the job injuries post retirement and for due process violations committed by the Defendants.

LEGAL ARGUMENT

I. Plaintiffs Are Entitled to Declaratory Relief Regarding Payment of All Medical Expenses for Their On the Job Injuries Post Retirement Pursuant to R.I.Gen. Laws § 45-19-1.

A. R.I.Gen. Laws § 45-19-1 Requires the City to Continue to Pay for the Post Retirement Medical Expenses of the Plaintiffs for on Duty Injuries.

In construing a statute, it is the Court's obligation "to ascertain the intent behind the legislative enactment and give effect to that intent." *Kaya v. Partington*, 681 A.2d 256, 260 (R.I. 1996) (quoting from *State v. Delaurier*, 488 A.2d 688, 693 (R.I. 1985)). Moreover, "if a mechanical application of a statutory definition produces an absurd result or defeats legislative intent, this Court will look beyond mere semantics and give effect to the purpose of the act." *State v. Delaurier,* 488 A.2d 688, 694 (R.I. 1985).

Section 45-19-1 states, in pertinent part:

> Whenever any police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal of any city, town, fire district, or the state of Rhode Island is wholly or partially incapacitated by reason of injuries received or sickness contracted in the performance of his or her duties, the respective city, town, or fire district, on state of Rhode Island by which the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, is employed, shall, during the period of the incapacity, pay the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, the salary or wage and benefits to which the police officer, fire fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, would be entitled had he or she not been incapacitated, and ***shall pay the medical, surgical, dental, optical, or other attendance, or treatment, nurses, and hospital services, medicines, crutches, and apparatus for the necessary period***, except that if any city, town, fire district, or the state of Rhode Island provides the police officer, fine fighter, crash rescue crewperson, fire marshal, chief deputy fire marshal, or deputy fire marshal, with insurance coverage for the related treatment, services, or equipment, then the city, town, fire district, or the state of Rhode Island is only obligated to pay the difference between the maximum amount allowable under the insurance coverage and the actual cost of the treatment, service, or equipment***. In addition, the cities, towns, fire districts, or the state of Rhode Island shall pay all similar expenses incurred by a member who has been placed on a disability pension and suffers a recurrence of the injury or illness that dictated his or her disability retirement.*** (Emphasis added.)

This statute was enacted in 1944 for the express purpose of giving municipal police and fire fighters better benefits than they would have received under workers compensation. *Kaya v. Partington,* 681 A.2d at 259; *Labbadia v. State*, 513 A.2d 18, 21 (R.I. 1986). Specifically, § 45-19-1 was enacted to provide pension benefits to disabled police officers and fire fighters in municipalities where such a disability pension system did not exist. *Lanni v. Ferrante*, 688 A.2d 865, 866 (R.I. 1997) (citing *St. Germain v. City of Pawtucket*, 119 R.I. 638, 641, 382 A.2d 180, 181 (1978)). Accordingly, in municipalities without a disability retirement system, police and fire fighters injured on the job must receive 100% of their medical benefits and salary, as opposed to only part of the pay and medical benefits to which they would be entitled under workers compensation. *Kaya*, 681 A.2d at 259. However, unlike workers compensation, which is optional, the benefits provided by § 45-19-1 are mandatory — this Section is the exclusive remedy for police and firefighters injured on the job. *Id*. (Emphasis added).

Moreover, because § 45-19-1 is remedial in nature, it must be construed liberally. *Aiudi v Pepin*, 417 A.2d 320, 322 (R.I. 1980). Critically, there is no express provision calling for the forfeiture of medical benefits once a policeman or firefighter leaves employment with the municipality by which he or she was employed at the time he or she was injured. By statute and by judicial acknowledgment, because of the dangers associated with their work, police and firefighters are not like other municipal employees. Consequently, by statute and by judicial acknowledgment, the benefits for police and firefighters for job-related injuries are supposed to be *greater* and not less than benefits afforded through the workers' compensation system, such that medical expenses for on the job injuries must be continued to be paid post retirement. Simply stated, where the cause of the disability retirement are injuries sustained on the job, retired police officers and firefighters should not have to incur the additional burden of medical expenses, co-pays, deductibles and the like, that would not have been incurred but for their performance of their jobs in the public interest. It would create an absurd result if by virtue of disability retirement, Plaintiffs lost medical benefits for injuries sustained on the job.

Plaintiffs assert that the statutory requirement for the continuation of medical benefits for on the job injuries post employment was established in *Aiudi v. Pepin*, 417 A. 2d 320 (R.I. 1980). The plaintiff in *Aiudi* was a Woonsocket police officer terminated involuntarily from employment for "conduct unbecoming an officer" after he stole groceries from a supermarket where he was acting as a security officer. *Id*. at 320-321. After being terminated, plaintiff presented medical bills to the city for an injury he had sustained while still employed by the city. *Id*. at 321. The medical bills were incurred after plaintiff had been dismissed from the police force. *Id*. at 320. The city refused to pay the bills and plaintiff brought a declaratory judgment action seeking pension and medical benefits under § 45-19-1. *Id*. at 320. The demand for pension benefits was denied on the grounds that, under the clear language of the statute, plaintiff was only entitled to full pay during the time he was employed as a police officer, therefore, after the date of termination, the only pension benefits he was entitled to were provided by the retirement system then in effect in the City of Woonsocket. *Id*. at 321-322. With respect to the payment of the medical bills, this Court, which had not made definitive rulings with respect to the issue of the payment of medical bills incurred post termination or retirement for an on the job injury, held that, ***regardless of the existence of a retirement system in the City of Woonsocket***, plaintiff was still entitled to be paid for his medical bills incurred post termination for his on the job injury. *Id*. at 322-323. In reaching this result, the Court stated:

> In determining whether [plaintiff] is eligible to recover the medical expenses awarded him by the trial justice, we look to that portion of § 45-19-1 which obligates a municipality to pay the medical expenses of an injured officer . . . "for such period as is necessary." Section 45-19-1 is remedial legislation that should be liberally construed. There is no express proviso calling for forfeiture of one's right to medical benefits in the event the officer, for some reason, has left municipal employment.

Id. at 322-323 (citations omitted.)

Aiudi dictates the outcome here. If anything, Plaintiffs' case is even stronger because (i) Plaintiffs were not terminated for dishonorable reasons, (ii) Defendants had a long-standing policy and practice that was bestowed upon Plaintiffs such that 100% of their medical benefits would be paid pursuant to R.I.Gen.. L. §45-19-1 post retirement and (iii) Defendants did in fact pay Plaintiffs these benefits for many years post retirement. Under the holding of *Aiudi*, Plaintiffs are entitled to have all of their medical bills incurred post retirement for on the job injuries paid for by Defendants in full.

Furthermore, the Rhode Island Supreme Court has held, as recently as 2001, that R.I.Gen. Laws. §45-19-1 specifically covers post retirement medical expenses incurred by a police officer or firefighter due to the job related injuries that led to his/her retirement, the very benefits at issue in this case. In *Webster v. Perotta*, 774 A.2d 68 (R.I. 2001), the Court held in clear and unequivocal language that, "[Section 45-19-1] contemplates, if an officer receiving compensation pursuant to § 45-19-1 elects to retire or reaches mandatory retirement age, he or she is entitled to reimbursement for non-covered medical expenses thereafter." *Id*. at 80. The *Webster* Court recognized and distinguished the treatment of pecuniary benefits from entitlement to medical benefits under § 45-19-1. This language clearly indicates that Plaintiffs are entitled to a declaratory judgment on their claim for continuing medical benefits post retirement pursuant to R.I. Gen. Laws 6 45-19-1.

Finally, it should be noted that this issue was not resolved by the Rhode Island Supreme Court in *Hagenberg v. Avedisian*, 879 A. 2d 436 (R.I. 2005). In *Hagenberg*, the Plaintiff sued individually and in his capacity as President of the Warwick Retired Police and Firefighters Association. However, the Court rejected the claims brought in a representative capacity, as the case was not brought as a class action. *Id* at 438, n. 2. Thus, none of the Plaintiffs in this pending action brought claims or were otherwise represented in *Hagenberg*.

Substantively, the Court did not address the interpretation of R.I.Gen. Laws §45-19-1, nor did it resolve the declaratory judgment claims. Instead, the Court affirmed the trial justice's decision to award medical benefits for on the job injuries post retirement based on its conclusion that the Board's decision to grant benefits to Hagenberg was binding on the City. The Court found that the trial justice's finding of estoppel against the City was not necessary because of the resolution of the Board to specifically grant Hagenberg said medical benefits. *Id* at 443. Critically, the Court concluded that Shelton was not vested with the authority to revoke the benefits that had been approved by the Board and could not unilaterally act to reduce or revoke said benefits without Board approval.

The Court opted to limit its ruling to the facts before it and declined to construe § 45-19-1 or the recurrence provisions in the absence of this issue being squarely presented. *Id* at 443-444.

Thus, whether § 45-19-1 was intended to provide medical benefits for on the job injuries post retirement remains an open issue that may be resolved by this Court with reference to the precedents cited herein from the Rhode Island Supreme Court. It is submitted that the only proper construction, based upon the arguments set forth herein, is to provide said medical benefits for as long as is necessary to treat on the job injuries sustained by police officers and firefighters regardless of retirement status.

B. **Section 45-19-1 is Not Preempted Because Neither the Warwick City Charter, Ordinances, or Collective Bargaining Agreement Provision Addresses the Issue of Medical Benefits to be Provided for Disabled-Retired Police and Firefighters in the City of Warwick.**

It is not disputed that if the City had in place a disability retirement system that expressly set forth medical benefits for those police officers and firefighters retired on disability because of service connected injuries, R.I.Gen. Laws § 45-19-1 would be preempted. However, that is not the case here.

As a threshold matter, Plaintiffs do not now, nor have they in the past, participated in the Municipal Employees Retirement System (MERS). The MERS program adopted by the City, Code § 60-311 and § 60-341, specifically exempts police officers and fire fighters from its application. Second, the Charter and Ordinances are silent with respect to the medical benefits to be paid to police and fire fighters retired on a disability pension for an on the job injury either pre or post retirement. In point of fact, Warwick's "disability retirement" program, for at least the last 30 years, has been exclusively § 45-19-1. Alternatively, Warwick is without a disability retirement program and § 45-19-1 applies.

Specifically, there are important distinctions between disability benefits and retirement benefits, as they are governed by separate sections of the Code. Pursuant to the Code, the City can force fire fighters to accept "Disability benefits," as provided in the Fire Prevention and Protection Chapter, and force police officers into "Service disability pension," as provided in the

Police Chapter. Code § 20-112, § 20-202 and § 52-38. Sections 20-112 and 20-202, governing fire fighters, both provide, in pertinent part:

> Disability benefits.
>
> (a) *Eligibility.*
>
> (1) Whenever a member becomes unfit to perform active duty by reason of mental or physical infirmity, the board may require such member to retire. Thereafter, he or she shall be paid, in accordance with section 20-121, an annual benefit as described below. . .

Likewise, Section 52-38, governing police officers, provides:

> Service disability pension.
>
> (a) Generally. When any officer or permanent member of the police department shall become permanently unfit for duty as a result of a service-connected injury or disease and is therefore placed by the board on the pension list, said officer or member shall receive a sum of 66 2/3 percent of his/her highest salary, which will be paid on semimonthly payments, subject to the limitation listed in subsection (b) of this section.

In this regard, it is important to emphasize: ***The provisions enabling the City to classify police and fire fighters as disabled relate only to the payment of money - they are silent with respect to the medical benefits due upon a disability-classification***. There is nothing in the Code requiring that, upon acceptance of disability benefits, police and fire fighters forgo medical benefits pursuant to § 45-19-1 for their on-duty injuries.

Although the Ordinances provide for health insurance benefits for retired police officers and firefighters, conspicuously absent is a provision for health insurance benefits for those police officers and firefighters who have retired because of a service related disability. This contrasts with the separate treatment for pension payments for service related disability retirement. The City's Ordinances, Rules and Regulations relating to medical coverage for other municipal retirees make no reference to § 45-19-1 or otherwise evidence that they apply to police and firefighters injured on duty.[2] Significantly, the City's standard medical care package for other

[2] The pertinent Code provisions provide:

municipal retirees does not comply with the mandate of § *45-19-1* to cover all costs and expenses for on-duty injuries to police and fire fighters.

The Rhode Island Supreme Court has confirmed that, in the absence of specific ordinances providing for disability and other pensions with legislative approval, the provisions of § 45-19-1 apply to disabled retirees with respect to medical benefits. *Brissette v. Potter*, 560 A.2d 324, 326 (R.I. 1989) (internal citations omitted). In *Brissette*, plaintiff was a Burrillville police officer incapacitated in the line of duty. After paying his benefits and full salary for two years, Burrillville terminated his service because he was no longer able to perform his duties. When Burrillville cut plaintiff's pay, plaintiff sought relief in court based upon his statutory entitlement to continued benefits. The trial justice issued summary judgment in favor of Burrillville. The *Brissette* Court reversed, stating:

> It is true that reference is made to a disability pension in [§ 45-19-1], but there is no clear delineation in respect to when and in what circumstances an officer's pay may be reduced when he is wholly or partially incapacitated due to injuries received in the performance of his duties.

Id. at 325-326.

Sec. 52-6. Health insurance coverage for retired police officers.

(a) The city, under the authority granted to it by the provisions of G.L. 1956, §45-2-11, as amended, shall provide Blue Cross and physician's service coverage to all of the employees of the police department of this city who are presently retired or who may hereafter become retired.

(b) The city's obligation to provide such coverage shall terminate at such time as such retiree attains the age which makes him/her eligible for Medicare coverage. (Code 1971, § 15-6)

Sec. 20-60. Health insurance coverage for retired firefighters.

(a) The city, under the authority granted to it by the provisions of G.L. 1956, §45-2-11, as amended, shall provide Blue Cross Blue Shield medical insurance to all of the employees of the fire department of this city who are presently retired or who may hereafter become retired.

(b) The city shall provide such coverage for those employees who retire from the department after July 1, 1983, for family or individual coverage as the employee may select

(c) The city's obligation to provide such coverage shall terminate at such time as such retiree attains the age which makes him/her eligible for Medicare coverage or at such time as the retiree or his/her spouse obtains equal or better medical coverage.

(d) A verification procedure shall be instituted whereby dual coverage can be verified. Any employee or retiree who fails to provide the necessary information is ineligible for family coverage. If said retiree or spouse, for any reason, loses his/her other available medical coverage, said retiree may resume his/her coverage under the city plan. (Code 1971, §7-55)

In the present case, the City cannot point to any controlling ordinance, statute or provision of a collective bargaining agreement authorizing it to provide benefits other than as set forth in § 45-19-1. By stipulated fact, like in *Brissette*, the City's Code of Ordinances is silent as to the medical benefits for its police and fire fighters post retirement. As disallowed by the Court in *Brissette*, the City has impermissibly attempted to substitute its standard medical care package for municipal retirees, by default and without political process of any kind, for the protections of § 45-19-1.

The City of Warwick has never adopted a pension system that deals with medical benefits for injuries sustained while on duty to be paid to disabled police and fire fighters post retirement. In fact, the undisputed facts show that Plaintiffs' medical expenses for their on the job injuries have been paid pursuant to R.I.Gen. Laws. §45-19-1 for well over thirty years. The silence of the City's Charter and Ordinances, when taken together with the Defendants' practice of paying for the Plaintiffs' job related medical expenses pursuant to R.I.Gen. Laws. §45-19-1, leads to the inescapable conclusion that the City has never adopted a pension system that provides for the payment of medical expenses for job related injuries and that these medical expenses have always been paid by the City pursuant to R.I.Gen. Laws. §45-19-1. Contrary to the Town of Warren in *Elliott v. Warren*, 818 A.2d 652 (R.I. 2003), Warwick cannot now assert that it has a "disability retirement system" in place other than § 45-19-1, pursuant to which it has always paid its disabled-retirees for the on-duty injuries dictating retirement. Accordingly, Defendants must be required to continue to pay all medical expenses for Plaintiffs' on the job injuries post retirement.

C. Payment of IOD Medical Expenses Post Retirement is Not Controlled by *Elliott v. Warren*.

Defendant Shelton premised the issuance of his December 11, 2003 letter upon his own interpretation of *Elliott v. Warren*. This unilateral determination that payment of IOD medical expenses post retirement in the City of Warwick was controlled by *Elliott v. Warren*, 818 A.2d

652 (R.I. 2003) was in error. *Elliott* is distinguishable from the case at bar and does not address the medical benefits at issue in the present matter. *Elliott* involved a case of "double dipping." In *Elliott*, the plaintiff, a Warren police office, was injured on the job and retired with a disability pension under the Municipal Employees Retirement System ("MERS"). *Id*. at 654. He collected benefits under MERS for approximately nine years when he suspended his benefits to take a position as a police officer in Florida. *Id*. Several years later, plaintiff returned to Rhode Island at which time his benefits under MERS were reinstated. *Id*. Plaintiff filed suit under § 45-19-1 arguing that he was entitled to benefits under that statute because the Town of Warren's entry into MERS was procedurally defective or, in the alternative, if it was not, that he was entitled to receive his pension under MERS and his medical bills under § 45-19-1. *Id*. The Supreme Court rejected the plaintiff's claim. *Id*. at 654-655. In doing so, the *Elliott* Court held that the Town of Warren had a retirement system in place when plaintiff retired and, therefore, under the principle that a specific statute takes precedence over a general statute, plaintiff was only entitled to benefits under MERS. *Id*. The Court also held that, after accepting benefits for approximately ten years under MERS, the plaintiff had elected his remedy and was not now at liberty to select a different remedy. *Id*. Moreover, the Court held neither statutory scheme, MERS or § 45-19-1, called for a bifurcation of benefits. *Id*.

Unlike the plaintiff in *Elliott*, Plaintiffs are not seeking to "double dip". They have, until now, always had 100 % of their medical benefits paid by Defendants. They are not seeking anything more than what they have been receiving for the last twenty plus years. Further, this is not an election of remedies case, as Plaintiffs have never elected to accept medical benefits under any other system. Finally, Plaintiffs are not seeking to bifurcate benefits that have not previously been bifurcated. Unlike the Plaintiff in *Elliott*, Plaintiffs here have, until now, always had their salary and medical benefits bifurcated by the City. Plaintiffs have always received pension benefits pursuant to the pension plan established by the City's Ordinances, and have received their medical expenses for their job related injuries pursuant to R.I.Gen. Laws. §45-19-1. Thus *Elliott* cannot be considered controlling in the case at bar.

D. Plaintiffs Are Entitled to the Full Payment of Medical Expenses Incurred as a Result of the Recurrence of the Effects of On the Job Injuries Post Retirement.

The General Assembly amended R.I.Gen. Laws. § 45-19-1 six years after *Santanelli v. City of Providence*, 259 A. 2d 849 (R.I. 1969), to include language requiring cities and towns to pay 100% of the medical bills of a retired disabled police or firefighter who has suffered a reoccurrence of an on the job injury as follows: "In addition, the cities, towns, fire districts, or the state of Rhode Island shall pay all similar expenses incurred by a member who has been ***placed on a disability pension and suffers a recurrence of the injury or illness that dictated his or her disability retirement***." The statute also expressly requires that the municipality "shall pay the medical, surgical, dental, optical, or other attendance, or treatment, nurses, and hospital services, medicines, crutches, and apparatus ***for the necessary period"*** These provisions, read together, clearly indicate that it was always the intent of the General Assembly in passing R.I.Gen. Laws. § 45-19-1 to have 100% of the medical bills for on the job injuries paid both pre and post retirement.[3]

In *Hagenberg v. Avedisian*, the Court cited to the amendment providing for payments for recurrence of the career-ending illness or injury but stated:

[3] In *Santanelli v. City of Providence*, 259 A. 2d 849 (R.I. 1969), a firefighter for the City of Providence involuntarily retired with a disability pension in 1963, after sustaining injuries on the job in 1960 which prevented him from any longer functioning as a firefighter. *Id*. at 209-210. During the period before retirement, 100% of his salary and medical benefits were paid for by the city. *Id*. After retirement, he received pension benefits from the city pension system and health care benefits from Blue Cross/Blue Shield and Physicians Service under a group coverage plan provided by the city. *Id*. At some point after retirement, he was told by his doctor that he would require additional treatment and hospitalization for his on the job injury. *Id*. The city, Blue Cross/Blue Shield and Physicians Service all refused to pay. *Id*. He sued to recover benefits under § 45-19-1. *Id*. In deciding this matter, the Supreme Court held that, since the Providence Retirement Act, which established the Providence Retirement System, did not provide for the payment of such benefits, the retired firefighter was entitled to no relief. *Id*. at 211-212. In closing, Justice Joslin, the author of the opinion, wrote that if plaintiff was not happy with the result, he should seek relief from the General Assembly. *Id*. at 212.

> We leave for another day the applicability of this provision to chronic conditions or diseases that, as a result of collective bargaining agreements, are included in the medical conditions for which an officer may be eligible for a disability retirement and whether these chronic conditions qualify as a "recurrence" within the meaning of the IOD statute.

Id at 444.

Thus, the Rhode Island Supreme Court has left the door open for a construction of the term "recurrence" which would extend to chronic conditions, such as heart conditions and high blood pressure, for which a municipality would remain obligated to pay all medical expenses notwithstanding disability retirement. This is the precise construction urged by the Plaintiffs here. And it is this construction that required the Board to conduct hearings for each of the individual Plaintiffs prior to terminating their medical benefits for their on the job injuries.

While it is true that the general workers' compensation laws define "recurrence" as the reappearance of a work-related injury, this is because medical benefits would normally end once the condition has reached a medical end point. *See Holme v. The Carlson Corp.*, 582 A.2d 905, 908 (R.I. 1990) (citing to *Mignone v. Shapewood Design, Inc.*, 525 A.2d 1297, 1300 (R.I. 1987).[4] Here, either medical benefits for the Plaintiffs under § 45-19-1 should have been continued as long as medically necessary, or should have been paid to Plaintiffs to the extent the expenses were necessitated by a chronic condition or a recurrence of a prior work related illness or injury. *See Blackwell v. Bostitch, Division of Textron*, 591 A.2d 384 (R.I. 1991) (awarding workers' compensation benefits for recurrence of chronic back pain suffered on the job). Under either scenario, payment of medical expenses for injuries or illnesses sustained on the job should not

[4] It should be noted that: "To qualify as a compensable claim under the Workers' Compensation Act, the original injury must have been work related. The employee, however, need not identify any precipitating factors, either work related or nonwork related, as the reason for the recurrence." *Mignone v. Shapewood Design, Inc.*, 525 A.2d at 1300.

have been terminated by the City without due process and an opportunity to be heard and should be reinstated until such evidentiary hearings can be held. *See infra*, Section IV.

II. Shelton's Letter Terminating Payment of All Medical Expenses for Plaintiffs' On the Job Injuries Post Retirement Was Ultra Vires and Must Be Rescinded Pursuant to the Warwick City Charter and Ordinances and Payment of Medical Benefits for On the Job injuries Must be Reinstated.

It is an undisputed fact that the Board of Public Safety ***alone*** controls all decisions relating to disability and determination of benefits upon retirement for police and fire fighters. As expressly set forth in the City Code of Ordinances, the Board is responsible for approving all applications for retirement, death, termination and disability benefits. Code § 20-137. *A fortiori*, the Board had to have approved the disability retirement benefits to the Plaintiffs, which included both pension benefits and payment of full medical expenses for on the job injuries, for said payments to have been disbursed by the City for decades. It is critical to recall that the payment of medical expenses, not otherwise paid for by insurance or outside a given plan, were ***routinely*** paid for by the City for all injured on duty police officers and firefighters, whether they remained employed by the City or had taken disability retirement. This was the rule decreed and approved by the Board, the entity with the sole authority to make said decision.[5]

As Defendants must concede, Shelton – the City's personnel director who was not a member of the Board of Public Safety – terminated Plaintiffs' benefits without the advice and consent of the Board of Public Safety, as required by the Code. As such, according to the record, Shelton's act in terminating benefits, and not the Board of Public Safety's award of the

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[5] In *Hagenberg v. Avedisian,* 879 A. 2d 436 (R.I. 2005), the Court rejected the City's argument that the previous payments of medical IOD benefits for retirees was based upon a lack of understanding of §45-19-1 and was therefore outside the scope of the Board's authority. *Id* at 443. To the contrary, the Board's decision to award medical benefits for on the job injuries post retirement was part of Hagenberg's disability retirement plan, was not dependent upon R.I.Gen. Laws § 45-19-1, and was well within the Board's authority The same conclusion is

Plaintiffs' medical benefits upon determination of disability retirement, was *ultra vires*. In this regard, the Rhode Island Supreme Court has previously concluded that Shelton's unilateral action to revoke benefits granted by the Board was outside of his vested authority. *Hagenberg v. Avedisian*, 879 A. 2d 436 (R.I. 2005).

Accordingly, Shelton's *ultra vires* action should be rescinded by this Court, as the termination of full payment of medical benefits for injuries sustained on duty post retirement was clearly outside his authority as prescribed by the City Charter and Ordinances. Furthermore, the Board's failure to review Plaintiffs' individual cases and to rescind Shelton's unauthorized pronouncement of the City's change in benefits, constitutes an unjust agency action which entitles Plaintiffs to their attorneys' fees and expenses in bringing this action pursuant to the Equal Access to Justice Act, R.I.Gen. Laws § 42-92-1 *et seq*.

III. Defendants are Estopped from Denying Plaintiffs Payment of All Medical Expenses for Their On the Job Injuries Post Retirement.

The doctrine of equitable estoppel may be invoked where the reliance by one party on a statement or promise of another renders it unjust for the other party to change its position on an issue. The factual considerations include the extent of reliance upon the agency's action or inaction, whether such reliance was reasonable or justified, and the authority of the agents involved and the public interests. *Greenwich Bay Yacht Basin Associates v. Brown*, 537 A.2d 988 (R.I. 1988). A municipality may, when acting within its authority, be estopped from denying that its acts induced detrimental reliance. *Ferrelli v. Department of Employment Security*, 106 R.I. 588, 594, 261 A.2d 906, 910 (1970). In order to successfully invoke this theory, a plaintiff must be able to prove that the circumstances are so unjust as to require the application of equitable estoppel. *See Town of Gloucester v. Olivio's Mobile Home Court, Inc.*, 300 A.2d 465

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warranted here, where the Board, over the course of decades, paid medical benefits post retirement to police officers and firefighters for injuries sustained while on duty.

(R.I. 1973); *Rotella v. McGovern*, 288 A.2d 258 (R.I. 1972) (city estopped from raising as a defense to action conduct of which it had constructive knowledge and made no protest for 11 years). When a claim for promissory or equitable estoppel is asserted against a government entity, the person making the promise must have actual authority to do so. *Romano v. Retirement Bd. Of Employees' Retirement System of R.I.*, 767 A.2d 35 (R.I. 2001).

In this case, the actions, conduct, communications and correspondence of the City and the various Defendants, constituted a promise by the City to pay for the Plaintiffs 100% of the medical expenses incurred as a result of their on the job injuries post retirement, which policy and practice continued for decades and was in place when each of the Plaintiffs retired on a disability pension. Defendants would not have made these promises if they did not reasonably expect Plaintiffs to rely on these promises. Plaintiffs did, in fact, rely on these promises as evidenced by the fact that they never challenged their disability status, nor did they ever act to obtain supplemental medical benefits that might have been required.

In addition, the equities weigh in favor of Plaintiffs since, to permit Defendants to stop paying these benefits now, when Plaintiffs can least afford it, would be grossly unfair and, would discourage other persons from becoming police or firefighters. By placing Plaintiffs on a disability-retirement status, the City has saved hundreds of thousands of dollars that the City would have had to pay them as an injured, active duty police officers and fire fighters. At the same time, because of their on-duty injuries suffered while serving the City, Plaintiffs incurred substantial additional expenses in healthcare costs. Once the individual Plaintiffs are over the age of 65, they will have no coverage for their job related injuries. For 25 years, the City has reduced Plaintiffs' compensation and left them less able to pay for their healthcare, while at the same time unilaterally and without notice reducing their health coverage causing greater expense.

Furthermore, these promises were made by the Board of Public Safety which, according to the City's Charter, was charged with the authority to make all decisions regarding pension benefits for police and fire retirees. Both the City's Charter and Ordinances are silent with respect to the medical benefits to be paid to police and fire fighters retired on a disability pension for an on the job injury either pre or post retirement. Thus, there is no limitation on the Board of Public Safety in awarding such medical benefits. Further, in the absence of any such limitation in the Code, § 45-19-1 applies. More than 25 years of adherence to the practice of issuing disability-retirement benefits pursuant to the statutory mandates establishes that § 45-19-1 is and has always been the disability-retirement system, with respect to medical benefits, for the City. Thus, the Board had actual authority to promise Plaintiffs that their medical bills for treatment related to their on the job injuries would be paid in full pursuant to R.I.Gen. Laws. §45-19-1.

Accordingly, since all of the elements necessary for either promissory or equitable estoppel are satisfied, this Court shout grant Plaintiffs' claim for promissory and/or equitable estoppel and Defendants should be estopped from denying 100% medical coverage to the Plaintiffs for their on the job injuries post retirement.

IV. Defendant Shelton's Unilateral Determination to Terminate Payment of Medical Expenses for on the Job Injuries Post Retirement, and the Defendants' Acquiescence and Ratification Thereof, Violated 42 U.S.C. § 1983 Entitling Plaintiffs to Compensatory Damages and Attorneys' Fees.

42 U.S.C. Section 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The federal civil rights act, 42 U.S.C. § 1983, provides a remedy for the deprivation of constitutional rights when that deprivation takes place under color of any statute, ordinance, regulation, custom or usage of a state. An actionable Section 1983 claim must allege facts sufficient to support a determination that (1) the conduct complained of has been committed by a person acting under "color of state law" and (2) that the alleged conduct worked a denial of rights secured by the Constitution or laws of the United States. *Rumford Pharmacy v. City of East Providence*, 970 F.2d 996, 999 (1st Cir. 1992).

Violations of due process may be both procedural and substantive. As a general matter, "[T]he Constitution requires some kind of hearing before the State deprives a person of liberty or property." *Zinermon v. Burch*, 494 U.S. 113, 127 110 S.Ct. 975, 984 (1990). The Supreme Court acknowledged limited circumstances when a post deprivation remedy satisfied due process such as when it was "impossible" for the State to anticipate and prevent a deprivation, *Id* at 128-130, 132, 110 S.Ct. at 984-985, 987; where State post deprivation remedies are made available, *Parrat v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908 (1981); or where it was "unduly burdensome" for the State to provide a pre-deprivation hearing when balanced against the interest at stake. *Zinermon v. Burch*, 494 U.S.at 128, 132, 100 S.Ct. 984, 987. No such circumstances are present here as the Board had in place a well established hearing procedure to resolve issues regarding retirement benefits which it failed to utilize in this case. There was no demonstrated or special need to revoke benefits without first invoking this procedure or, at a minimum, providing notice and an opportunity for the Plaintiffs to be heard. Moreover, in the present case, post deprivation due process was denied as well. *See* Plaintiffs' Rule 12.1 Statement of Undisputed Facts, ¶ 30, 31, 32.

In addition, the due process clause prohibits "certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Id*. at 125, 110 S.Ct at 983 (internal citations omitted). In this circumstance, the constitutional violation actionable under § 1983 is complete when the wrongful action is taken. *Id*. This claim is premised on the proposition that Defendants' conduct, regardless of procedural deficiencies, was in itself impermissible. *L.A.Realty v. Town of Cumberland*, 698 A.2d 202 (R.I. 1997) (finding denial of substantive due process where town officials altered improperly adopted referendum to delete all grandfathered rights provisions).

Here, Shelton issued his December 11, 2003 letter under color of state law, knowingly usurping the authority of the Board over pension and medical benefits. Shelton's action denied Plaintiffs' their vested rights in their retirement benefits which included full payment of medical expenses for their on the job injuries, without affording a hearing before the Board or indeed any opportunity to present evidence regarding their entitlement to continued payment of medical benefits for expenses necessitated by their original on the job injuries or any recurrences thereof. Moreover, at the time these benefits were unilaterally revoked, Plaintiffs' property rights in continued pension benefits were clearly established by the City ordinances, Board practice and procedure, and state law.

The revocation of pension rights in violation of City Ordinances constitutes a violation of substantive and procedural due process rights. *Ginaitt v. Haronian*, 806 F.Supp. 311, 317 (D.R.I. 1992) (recognizing that "there is little question that the plaintiff has a property interest in his pension."). Moreover, the City is liable under § 1983 where, as here, the injuries were inflicted pursuant to government policy or custom, inasmuch as the constitutional violations were approved by the official or officials responsible for establishing the policy at issue. *Id* at 320. The other Defendants' failure to reverse Shelton's action perpetuated the constitutional due process violations foisted upon the Plaintiffs.

Ginaitt v. Haronian is strikingly on point as it involved a civil rights action by a former Warwick firefighter seeking restoration of disability pension benefits that were revoked by the Board of Public Safety. In that case, Oscar Shelton advised the Board to revoke the plaintiff's medical benefits in the course of a regular meeting, without giving notice or an opportunity to be heard to the plaintiff. The Court found that the Board's action in revoking the disability benefits was in contravention the Warwick City Ordinances and therefore was a violation of the plaintiff's substantive due process rights. *Id* at 314-319. The Court found that the Board had consciously deviated from the requirements of the City Code and consequently violated plaintiff's substantive due process rights because "Defendants' actions were arbitrary and capricious and encompassed fundamental procedural irregularity." *Id* at 316-317. Significantly, the Court found the defendant members of the Board liable individually because they were responsible for the suspension of the disability benefits and found the City liable because the constitutional violation was approved by the city officials responsible for establishing the final policy with respect to the subject matter [pensions] in question. *Id* at 320.

Furthermore, should this Court determine, as it must, that the actions of the Defendants violated 42 U.S.C. § 1983, Plaintiffs are entitled to recover their attorneys fees pursuant to 42 U.S.C § 1988 which provides in pertinent part: "In any action or proceeding to enforce a provision of sections [1983 of this title] * * * the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. . ." Since Plaintiffs were compelled to bring this action in order to obtain the restoration of their medical benefits, an award of attorney's fees is clearly warranted.

CONCLUSION

For the reasons set forth herein, Plaintiffs request that summary judgment be entered in their favor with respect to liability on their claims against the Defendants for full payment of medical expenses for their on the job injuries and civil rights violations, in all respects.

Plaintiffs,

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CERTIFICATION

I hereby certify that the foregoing Memorandum in Support of Plaintiffs' Motion for Summary Judgment was filed electronically with the United States District Court for the District of Rhode Island and is available for viewing and downloading from the Electronic Case Filing system. The following attorney received service by electronic means on this 2nd day of July 2007:

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